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EXTRAORDINARY

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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती हैं जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 28th July, 1977 —

BILL NO. 88 OF 1977

A Bill to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:—

PRELIMINARY

1 (1) This Act may be called the Lokpal Act, 1977

(2) It extends to the whole of India.

(3) It shall come to force on such date as the Central Government may by notification in the Official Gazette, appoint.

2 In this Act, unless the context otherwise requires,—

(a) “competent authority”, in relation to a public man, means,—

(i) in the case of a public man referred to in sub-clause (i) or sub-clause (ii) of clause (g) the Prime Minister;

(ii) in the case of any other public man such authority as may be prescribed;

(b) “complaint” means a complaint alleging misconduct against a public man;

(c) “corruption” includes anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1947;

Short
title,
extent
and
com-
mence-
ment
Defini-
tions.

(d) "Lokpal" means a person appointed under section 4 as the Lokpal and, where a Special Lokpal is appointed under section 8 for exercising jurisdiction in relation to any complaints or any classes of complaints, includes, for the purpose of such complaints or classes of complaints, such Special Lokpal;

(e) "misconduct" means misconduct (whether committed before or after the commencement of this Act or within or outside India) of the nature specified in section 3;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "public man" means a person who is or has been—

(i) a member (including a Deputy Minister) of the Council of Ministers for the Union;

(ii) a member of either House of Parliament;

(iii) the Chief Minister of a State;

(iv) a member (including a Deputy Minister) of the Council of Ministers for a Union territory,

(v) a member of the Legislative Assembly for any Union territory,

(vi) a member of the Executive Council under the Delhi Administration Act, 1966;

19 of 1966

(vii) the Mayor of a Municipal Corporation in any Union territory;

(h) "public servant" shall have the same meaning as in section 21 of the Indian Penal Code

45 of 1860

Mis-
conduct
by a
public
man.

3 (1) A public man commits misconduct—

(a) if he is actuated in the discharge of his functions as such public man by motives of personal interest or other improper or corrupt motives, or

(b) if he abuses or attempts to abuse his position as such public man to cause harm or undue hardship to any other person; or

(c) if he directly or indirectly allows his position as such public man to be taken advantage of by any of his relatives or associates and by reason thereof such relative or associate secures any undue gain or favour to himself or to another person or causes harm or undue hardship to another person.

Explanation.—For the purposes of this clause, "associate" in relation to a public man includes any person in whom such public man is interested; or

(d) if he fails to act in any case otherwise than in accordance with the norms of integrity and conduct which ought to be followed by the class of public men to which he belongs; or

(e) if any act or omission by him constitutes corruption

(2) A public man who—

(a) abets (within the meaning of section 107 of the Indian Penal Code) the commission of, or

45 of 1860

(b) conceals or attempts to conceal from detection the commission of,

misconduct of the nature specified in sub-section (1) by another public man, also commits misconduct.

(3) A public man, being a person who is or has been the Chief Minister of a State who—

45 of 1860

(a) abets (within the meaning of section 107 of the Indian Penal Code) the commission of, or

(b) conceals or attempts to conceal from detection the commission of,

misconduct of the nature specified in sub-section (1) by any other person who is or has been a member (including a Deputy Minister) of the Council of Ministers of the State, also commits misconduct and for this purpose references to "public man" and "public men" in sub-section (1) shall be construed as also including a reference to such other person.

MACHINERY FOR INQUIRIES

4 (1) For the purpose of making inquiries in respect of complaints under this Act, the President shall, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint, by warrant under his hand and seal, a person to be known as the Lokpal

Appoint
ment
of
Lokpal

(2) Every person appointed as the Lokpal shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by the President, an oath or affirmation in the form set out in the Schedule.

5 The Lokpal shall not be a Member of Parliament or a Member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as Lokpal), or be connected with any political party, or carry on any business, or practise any profession, and accordingly, before he enters upon his office, a person appointed as the Lokpal shall,—

Lokpal
to be
ineligible
to hold
other
offices

(a) if he is a Member of Parliament or of the Legislature of any State, resign such membership; or

(b) if he holds any office of trust or profit, resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, cease to practise such profession.

Term of
office
and
other
con-
ditions
of
service
of
Lokpal

6. (1) A person appointed as the Lokpal shall hold office for a term of five years from the date on which he enters upon his office;

Provided that—

(a) the Lokpal may, by writing under his hand addressed to the President, resign his office;

(b) the Lokpal may be removed from his office in the manner provided in section 7.

(2) On ceasing to hold office, the Lokpal shall be ineligible for further employment to any office of profit under the Government of India or the Government of a State.

(3) There shall be paid to the Lokpal in respect of time spent on actual service salary at the rate of five thousand rupees per mensem;

Provided that if the Lokpal is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Lokpal shall be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

(4) The Lokpal shall be entitled without payment of rent to the use of an official residence.

(5) The allowances and pension payable to, and other conditions of service of, the Lokpal shall be such as may be determined by the President having regard to the allowances and pension payable to, and other conditions of service of, the Chief Justice of India:

Provided that the allowances and pension payable to, and other conditions of service of, the Lokpal shall not be varied to his disadvantage after his appointment.

Removal
of
Lokpal

7. (1) The Lokpal shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokpal under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and, accordingly, the provisions of that Act shall, subject to necessary modifications, apply in relation to the removal of the Lokpal as they apply in relation to the removal of a Judge.

8. (1) Notwithstanding anything contained in section 4, if the President is satisfied on a report from the Lokpal that it is necessary so to do for the expeditious disposal of complaints under this Act, he may, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint, by warrant under his hand and seal, one or more persons to be a Special Lokpal or Special Lokpals for exercising jurisdiction in relation to such complaints or such classes of complaints under this Act as may be specified in the warrant.

Special
Lokpals

(2) A Special Lokpal shall hold office for a term of five years or for such shorter term as may be specified in the warrant of his appointment and a Special Lokpal appointed for a term of less than five years shall be eligible for reappointment:

Provided that the total period for which a person may hold the office of Special Lokpal shall in no case exceed five years

(3) Save as otherwise expressly provided in this Act, the provisions of this Act relating to the Lokpal, including the provisions relating to the oath or affirmation to be made by the Lokpal, the ineligibility of the Lokpal to hold other offices, the conditions of service of the Lokpal and removal of the Lokpal, the functions, powers and duties of the Lokpal, shall apply in relation to a Special Lokpal as they apply in relation to the Lokpal but nothing in this sub-section shall be construed to enable a Special Lokpal to exercise jurisdiction in relation to any complaint or class of complaints not specified in the warrant by which he was appointed.

9 (1) The Lokpal shall have a Secretary and such other officers and employees as may be prescribed to assist him in the discharge of his functions (including verification and inquiries in respect of complaints) under this Act.

Staff
of
Lokpal

(2) Without prejudice to the provisions of sub-section (1), the Lokpal may, for the purpose of dealing with any complaints or any classes of complaints, secure—

(i) the services of any officer or employee or investigating agency of the Central Government or a State Government with the concurrence of that Government; or

(ii) the services of any other person or agency.

(3) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear in the discharge of their functions) shall be such as may be prescribed in consultation with the Lokpal.

(4) The officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall also assist the Special Lokpals (if any) in the discharge of their functions.

JURISDICTION AND PROCEDURE IN RESPECT OF INQUIRIES

Jurisdic-
tion of
Lokpal.

10. (1) Subject to the other provisions of this Act, the Lokpal may inquire into any matter involved in, or arising from, or connected with, any allegation of misconduct against a public man made in a complaint under this Act.

(2) No matter in respect of which a complaint may be made under this Act shall be referred for inquiry under the Commissions of Inquiry Act, 1952, except on the recommendation or with the concurrence of the Lokpal.

60 of 1952.

Matters
not
subject
to
jurisdic-
tion of
Lokpal.

11. (1) The Lokpal shall not inquire into any matter concerning any person if he has any bias in respect of such matter or person and if any dispute arises in this behalf, the President shall, on an application made by the party aggrieved, obtain, in such manner as may be prescribed, the opinion of the Chief Justice of India and decide the dispute in conformity with such opinion

(2) The Lokpal shall not inquire into any act, or conduct, of any person other than a public man except in so far as he considers it necessary so to do for the purposes of his inquiry into any allegation of misconduct against a public man.

(3) The Lokpal shall not inquire into any matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, on his recommendation or with his prior concurrence.

60 of 1952.

(4) The Lokpal shall not inquire into any allegation of misconduct against a public man if the complaint in respect thereof is made after the expiry of five years from the date on which the misconduct is alleged to have been committed:

Provided that the Lokpal may entertain such a complaint, if the complainant satisfies him that he had sufficient cause for not making the complaint within the said period of five years

Com-
plaints.

12. (1) Any person other than a public servant may make a complaint under this Act to the Lokpal.

(2) The complaint shall be in the prescribed form and shall set forth particulars of the misconduct alleged and shall be accompanied by an affidavit in support of the allegation of misconduct and the particulars thereof and a certificate in the prescribed form in respect of the deposit under sub-section (3)

(3) The complainant shall deposit in such manner and with such authority or agency as may be prescribed a sum of one thousand rupees to be available for disposal under section 24:

Provided that the Lokpal may for sufficient cause to be recorded in writing exempt a complainant from the requirement under this sub-section.

(4) Notwithstanding anything contained in the foregoing sub-sections, any letter written to the Lokpal by a person in any jail or other place of custody or in any asylum or other place for insane persons may, if the Lokpal is satisfied that it is necessary so to do, be treated as a complaint made in accordance with the provisions of this section

(5) Notwithstanding anything contained in any other enactment, it shall be the duty of a police officer or other person in charge of any jail or other place of custody or of any asylum or other place for insane persons to forward, without opening, any letter addressed to the Lokpal by a person imprisoned or detained in such jail, place of custody, asylum or other place, to the Lokpal without delay.

13. (1) If the Lokpal is satisfied, after considering a complaint and after making such verification as he deems appropriate,—

(a) that the complaint is not made within the period of five years specified in sub-section (4) of section 11 and that there is no sufficient cause for entertaining the complaint, or

(b) that he cannot make an inquiry in respect of the complaint by reason of the provisions of sub-section (1), (2) or (3) of section 11; or

(c) that the complaint is frivolous or vexatious or is not made in good faith; or

(d) that there are no sufficient grounds for inquiring into the complaint,

the Lokpal shall dismiss the complaint after recording his reasons therefor and communicate the same to the complainant and to the competent authority concerned.

(2) The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Lokpal deems appropriate in the circumstances of the case and in particular the Lokpal may, if he deems it necessary so to do, call for the comments of the public man concerned.

14. (1) If, after the consideration and verification under section 13 in respect of a complaint, the Lokpal proposes to conduct any inquiry, he—

(a) shall forthwith forward a copy of the complaint to the competent authority concerned;

(b) may make such orders as to the safe custody of documents relevant to the inquiry as he deems fit;

(c) shall, at such time as he considers appropriate, forward a copy of the complaint to the public man concerned and afford him an opportunity to represent his case.

(2) Every such inquiry shall, unless the Lokpal, for reasons to be recorded in writing, determines otherwise, be conducted *in camera*.

(3) Save as aforesaid, the procedure for conducting any such inquiry shall be such as the Lokpal considers appropriate in the circumstances of the case.

15. (1) Subject to the provisions of this section, for the purpose of any inquiry (including the verification under section 13), the Lokpal—

(a) may require any public servant or any other person, who, in his opinion is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document;

Preliminary scrutiny of complaints by Lokpal.

Procedure in respect of inquiries.

Evidence.

(b) shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908.

(i) summoning and enforcing the attendance of any person and examining him on oath,

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents; and

(vi) such other matters as may be prescribed.

(2) A proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

45 of 1960.

(3) Subject to the provisions of sub-section (4),—

(a) no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any provision of law whatever, shall apply to the disclosure of information for the purposes of any inquiry (including the verification under section 13) under this Act; and

(b) the Government or any public servant shall not be entitled, in relation to any such verification or inquiry, to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any provision of law whatever in legal proceedings

(4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document—

(a) as might prejudice the security, or defence, or international relations, of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime, or

(b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or of the Cabinet of the Government of any State or Union territory or of the Executive Council under the Delhi Administration Act, 1966, or of any Committee of such Cabinet, or Executive Council,

19 of 1966.

and for the purpose of this sub-section, a certificate issued by a Secretary to the Government certifying that any information, answer, or portion of a document, is of the nature specified in clause (a) or clause (b) shall be binding and conclusive:

Provided that the Lokpal may require any information or answer or portion of a document in respect of which a certificate is issued under

this sub-section to the effect that it is of the nature specified in clause (a) to be disclosed to him in private for scrutiny and if on such scrutiny the Lokpal is satisfied that such certificate ought not to have been issued, he shall declare the certificate to be of no effect

16. (1) If the Lokpal has reason to believe that any documents which, in his opinion, will be useful for, or relevant to, any inquiry under this Act, are secreted in any place, he may authorise any officer subordinate to him, or any officer of an investigating agency referred to in sub-section (2) of section 9, to search for and to seize such documents

Search
and
seizure.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any inquiry under this Act and that it would be necessary to retain the document in his custody, he may so retain the said document till the completion of such inquiry:

Provided that where such document is seized before the commencement of such inquiry, the Lokpal shall return the document before the expiration of a period of one year from the date on which it is seized unless such inquiry has been commenced before such expiration.

Explanation—For the purposes of this sub-section, an inquiry in respect of a complaint—

(a) shall be deemed to have commenced on the date on which the Lokpal forwards a copy of the complaint to the competent authority concerned under clause (a) of sub-section (1) of section 14;

(b) shall be deemed to have been completed on the date on which the Lokpal closes the case under section 17.

2 of 1974

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "magistrate", wherever it occurs, the words "Lokpal or any officer authorised by him" were substituted.

17. (1) If, after inquiry in respect of a complaint, the Lokpal is satisfied,—

Report.

(a) that no allegation made in the complaint can be substantiated either wholly or partly, he shall close the case under information to the complainant, the public man and the competent authority concerned;

(b) that all or any of the allegations made in the complaint can be substantiated either wholly or partly, he shall, by report in writing, communicate his findings and recommendations to the competent authority.

(2) The competent authority shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokpal is satisfied with the action taken, or proposed to be taken on the basis of his report under clause (b) of sub-section (1), he shall close the case under information to the complainant, the public man and the competent authority concerned, but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the President and also inform the complainant concerned.

(4) The Lokpal shall present annually to the President a consolidated report on the administration of this Act.

(5) As soon as may be after the receipt of a special report under sub-section (3), or the annual report under sub-section (4), the President shall cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament

Special provisions in respect of complaints against the Prime Minister

18. If the Prime Minister receives a copy of any complaint against himself under clause (a) of sub-section (1) of section 14 or any information or report in respect of a complaint against himself under sub-section (1) of section 17, he shall cause the same to be placed, without delay, before the other members of the Council of Ministers for the Union.

MISCELLANEOUS

Expenditure on Lokpal and Special Lokpals to be charged on the Consolidated Fund of India.

19. The salaries, allowances and pensions payable to, or in respect of, the Lokpal and the Special Lokpals shall be expenditure charged on the Consolidated Fund of India.

Secrecy of information.

20 (1) Any information obtained by the Lokpal, or by any officer, employee, agency or person referred to in section 9, in the course of, or for the purposes of, any verification or inquiry under this Act, and any evidence recorded or collected in connection therewith shall be treated as confidential and, notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall be entitled to compel a Lokpal, or any such officer, employee, agency or person, to give evidence relating to such information or to produce the evidence so recorded or collected.

1 of 1872.

(2) Nothing in sub-section (1) shall apply to the disclosure of the information or evidence referred to therein—

(a) for the purposes of this Act or for the purposes of any action or proceedings to be taken on any report under section 17; or

(b) for the purposes of any proceedings, for an offence of giving or fabricating false evidence, under the Indian Penal Code; or

45 of 1860.

(c) for such other purposes as may be prescribed.

21. (1) Whoever intentionally offers any insult, or causes any interruption, to the Lokpal while the Lokpal is making any verification or conducting any inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Inten-
tional
insult
or in-
terrup-
tion to,
or bring-
ing into
dis-
repute,
Lokpal.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement, or does any other act, which is calculated to bring the Lokpal into disrepute, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

2 of 1974.

(3) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Lokpal.

22. (1) If, at any stage of a proceeding before the Lokpal, it appears to the Lokpal that any person appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, the Lokpal may, if satisfied that it is necessary and expedient in the interests of justice that the person should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973, and sentence him to imprisonment for a term which may extend to three months or to fine which may extend to five hundred rupees, or to both.

2 of 1974.

Power
of
Lokpal
to try
certain
offences
summarily.

45 of 1860.

(2) When any such offence as is described in section 175, section 178, section 179 or section 180 of the Indian Penal Code is committed in the view or presence of the Lokpal, the Lokpal may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to simple imprisonment for a term which may extend to one month, or to fine which may extend to five hundred rupees, or to both.

(3) In every case tried under this section, the Lokpal shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

2 of 1974.

(4) Any person convicted on a trial held under this section may appeal to the High Court and the provisions of Chapter XXIX of the Code of Criminal Procedure, 1973, shall so far as may be, apply to appeals under this section and the High Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(5) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

2 of 1974

(6) Words and expressions used in this section and not defined in this Act shall have the same meanings as in the Code of Criminal Procedure, 1973.

2 of 1974.

Con -
ferment
of ad-
ditional
func-
tions
on
Lokpals.

23. (1) The President may, by notification in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal such additional functions in relation to the eradication of corruption as may be specified in the notification.

(2) The President may, by order in writing and subject to such conditions or limitations as may be specified in the order, require the Lokpal to inquire into any allegations of misconduct specified in the order in respect of a public man and, notwithstanding anything contained in this Act, the Lokpal shall comply with such order.

(3) Where any additional functions are conferred on the Lokpal under sub-section (1), or when the Lokpal is to make any inquiry under sub-section (2), the Lokpal shall exercise the same powers and discharge the same functions as he would in the case of any inquiry made on a complaint under this Act and the provisions of this Act shall apply accordingly.

Dis-
posal of
deposit.

24. The sum deposited by a complainant under section 12 shall,—

(a) in a case where the complaint is dismissed under clause (c) of section 13, stand forfeited to the Central Government;

(b) if the Lokpal, for reasons to be recorded in writing, so directs, be utilised for compensating the public man complained against; and

(c) in any other case, be refunded to the complainant.

Protec-
tion.

25. (1) No suit, prosecution, or other legal proceeding, shall lie against the Lokpal, or against any officer, employee, agency or person referred to in section 9, in respect of anything which is in good faith done, or intended to be done, under this Act.

(2) No proceedings of the Lokpal shall be held bad for want of form and no proceedings or decision of the Lokpal shall be liable to be challenged, reviewed, quashed, or called in question, in any court.

Power to
delegate

26. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any powers conferred or duties imposed on him by or under this Act [except the powers under the proviso to sub-section (4) of section 11, and the proviso to sub-section (3) of section 12, the power to dismiss a complaint under sub-section (1) of section 13 and the powers to close cases and make reports under section 17] may also be exercised or dis-

charged by such of the officers, employees or agencies referred to in sub-section (1) or sub-section (2) of section 9, as may be specified in the order.

27. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

Power to
make
rules.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for—

(a) the authorities required to be prescribed under sub-clause (ii) of clause (a) of section 2;

(b) the officers and employees who may be appointed under sub-section (1) of section 9;

(c) the terms and conditions of service of the officers, employees, agencies and persons referred to in sub-section (3) of section 9;

(d) the form in which complaints may be made under section 12 and the fees, if any, which may be charged in respect thereof;

(e) the manner in which and the authorities or agencies with whom deposits shall be made under sub-section (3) of section 12 and the form in which certificates shall be furnished in respect of such deposits under sub-section (2) of section 12;

(f) the matters referred to in sub-clause (vi) of clause (b) of sub-section (1) of section 15;

(g) any other matter which is to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

28. Nothing contained in this Act shall be construed as affecting the constitution of, or the continuance of functioning or exercise of powers by any Commission of Inquiry appointed under the Commissions of Inquiry Act, 1952 before the commencement of this Act and no complaint shall be made under this Act in respect of any matter referred for inquiry to such Commission before such commencement.

Saving.

THE SCHEDULE

[See section 4(2)]

, having been appointed Lokpal,

swear in the name of God

do _____, that I will bear true faith and allegiance

solemnly affirm

to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will.

STATEMENT OF OBJECTS AND REASONS

In its interim report on the "Problem of Redress of Citizens' Grievances" submitted in 1966, the Administrative Reforms Commission recommended, *inter alia*, the setting up of an institution of Lokpal.

2. To give effect to this recommendation of the A.R.C., a Bill called the "Lokpal and the Lokayuktas Bill, 1968" was introduced in the Fourth Lok Sabha in 1968. The Bill was considered by a Joint Committee of the two Houses of Parliament, and the Bill, as reported by the Joint Committee, was passed by the Lok Sabha in 1969. While this Bill was pending in the Rajya Sabha, the Fourth Lok Sabha was dissolved; and, consequently, the Bill lapsed. In 1971, the Bill as passed by the previous Lok Sabha was re-introduced in the Lok Sabha as the "Lokpal and Lokayuktas Bill, 1971". This Bill lapsed on the dissolution of the Fifth Lok Sabha. As explained in the Statement of Objects and Reasons appended to the 1971 Bill, that Bill differed from the draft Bill proposed by the A.R.C. in two major respects. Firstly, it did not extend to public servants in the States. Secondly, it did not confine itself to Ministers and Secretaries alone. In other words, the 1971 Bill sought to provide a statutory machinery to inquire into complaints based on actions of Union Public Servants including Ministers.

3. The matter has been re-examined having regard to the recommendations of the A.R.C., the provisions of the 1971 Bill and other laws on the subject enacted in various States from time to time and the experience of the functioning of such institutions in the States where they have been set up. In the light of this re-examination, it is proposed to alter the scheme of the Lokpal as incorporated in the 1971 Bill in material respects for making the institution of Lokpal an effective instrument to combat the problem posed by corruption at higher political levels.

4. Under the scheme now proposed, the jurisdiction of Lokpal will cover any complaint of misconduct (pertaining to a period not exceeding five years prior to the date of the complaint) against a person who is or has been a public man as defined in clause 2(g) of the Bill. The Prime Minister, Members of Parliament and Chief Ministers of States are being brought within the purview of the Lokpal. Allegations against civil servants will not come within the purview of the Lokpal; and grievances, as distinct from allegations of misconduct, will be excluded from his jurisdiction. The Lokpal will have under his direct administrative control an independent investigating machinery to assist him in the discharge of his functions.

5. The Bill seeks to give effect to the Lokpal Scheme as proposed in the preceding paragraph. The Notes on clauses explain the various provisions of the Bill.

NEW DELHI;
The 23rd July, 1977.

CHARAN SINGH,

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 6/1/77-Lokpal, dated the 25th July, 1977 from Shri Charan Singh, Minister of Home Affairs to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith, recommends under clauses (1) and (3) of article 117 of the Constitution of India, for introduction and consideration of the Bill in Lok Sabha.

Notes on clauses

Clause 2: Sub-clause (a).—The definition of “competent authority” is relevant for the purposes of clause 13(1), clause 14(1) and clause 17(1), (2) and (3).

Sub-clause (e).—This sub-clause makes it clear that “misconduct” for the purposes of the proposed legislation includes also misconduct committed before the commencement of the proposed legislation and misconduct committed outside India.

Sub-clause (g).—This sub-clause defines the expression “public man”. The other definitions in the clause are self-explanatory.

Clause 3—This clause seeks to spell out the various categories of misconduct by public men which will include not only offences punishable under Chapter IX of the Indian Penal Code and the Prevention of Corruption Act, but also other irregularities and improprieties as indicated in sub-clause (1) of the clause. Parts of this sub-clause, e. g., (a), (b) and (e), follow in substance the definition of allegation contained in clause 2(b) of the Lokpal and Lokayuktas Bill, 1971 (hereinafter referred to as the 1971 Bill). Part (c) provides for situations where a public man, directly or indirectly, allows his position as public man to be abused by his relatives or associates. Part (d) seeks to provide for cases where the conduct of a public man is not in conformity with the norms of integrity expected of him.

Clause 4—This clause provides for the appointment of Lokpal. The method of appointment of a Lokpal is in substance the same as provided in sub-clause (1) of clause 3 of the 1971 Bill, with the variation that instead of consultation with the Leader of Opposition in the Lok Sabha, consultation with the Chairman of Rajya Sabha and the Speaker of the Lok Sabha has been provided.

Clause 5.—This clause is self-explanatory and corresponds to clause 4 of the 1971 Bill.

Clause 6—This clause provides for the term of office and other conditions of service of the Lokpal and is based on clause 5 of the 1971 Bill. It provides for the salary payable to the Lokpal. It also provides that the allowances and pension payable to and other conditions of service of the Lokpal shall be such as may be determined by the President having regard to the allowances and pension payable to and other conditions of service of the Chief Justice of India.

Clause 7—This clause deals with the removal of Lokpal and is in substance the same as provided in clause 6 of the 1971 Bill. It, however, seeks to make it clear that the grounds and procedure for removal of Lokpal will be the same as those applicable in the case of Judges of Supreme Court

Clause 8.—This is a new provision. This clause provides for the appointment of one or more Special Lokpals when on a report from the Lokpal the President is satisfied that it is necessary to have additional Lokpal(s) for the expeditious disposal of complaints. A Special Lokpal may be appointed for a term of 5 years or for a shorter period. The procedure for appointment of Special Lokpal, the salary payable to a Special Lokpal and all other conditions of service of a Special Lokpal, are the same as those of the Lokpal with the exception that if a Special Lokpal is appointed for a term shorter than 5 years, he will be eligible for re-appointment provided the total period does not exceed 5 years.

Clause 9.—This clause provides for an independent investigating machinery and other staff to assist the Lokpal which will be under his direct administrative control. It also provides that the Lokpal can secure the services of other officers and investigating agencies of the State and the Central Government with the concurrence of the Government concerned or any other person or agency considered necessary by him. This clause also provides that the matters relating to salary, allowances and other conditions of service of persons working under the Lokpal will be regulated by rules framed in consultation with him. There is a provision that special conditions of service will be prescribed for them with a view to enabling them to act without fear in the discharge of their functions.

Clause 10.—This clause deals with the jurisdiction of the Lokpal. Sub-clause (1) provides that the Lokpal may inquire into any allegation of misconduct against a public man, made in the complaint. Sub-clause (2) provides that matters in respect of which complaints may be made shall not be referred for inquiry under the Commissions of Inquiry Act, 1952, without the concurrence of the Lokpal.

Clause 11.—This clause deals with matters which are not subject to the jurisdiction of the Lokpal. Sub-clause (1), which is a new provision, provides that the Lokpal shall not inquire into any matter concerning any person if he has any bias in respect of such matter or person. Sub-clause (3) provides that the Lokpal shall not inquire into any matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, on his recommendation or with his prior concurrence. Sub-clause (4) provides for the same period of limitation (five years from the commission of misconduct) as in sub-clause (5) of clause 8 of the 1971 Bill.

Clause 12.—This clause follows, in substance clause 9 of the 1971 Bill and provides that any person other than a public servant may make a complaint to the Lokpal. It provides that the complaint will have to be in writing in the prescribed form accompanied by an affidavit. There is an additional provision in this clause for a deposit of Rs 1,000 by the complainant. The Lokpal is being empowered to exempt for sufficient cause a complainant from the requirement as to deposit.

Clause 13.—This clause provides for preliminary scrutiny of complaints by Lokpal and for dismissal of complaints which on verification are found to be frivolous or vexatious or not subject to the jurisdiction of the Lokpal or not made within the period of limitation. This clause incorporates provisions of sub-clauses (4) and (5) of clause 10 of the 1971 Bill.

Clause 14.—This clause provides for the procedure to be adopted by the Lokpal in respect of inquiries. The clause provides, *inter alia*, for the forwarding of a copy of the complaint to the concerned competent authority and the public man and for giving the latter an opportunity to represent his case. This corresponds to sub-clauses (1), (2) and (3) of clause 10 of the 1971 Bill.

Clause 15.—This clause corresponds to clause 11 of the 1971 Bill. Sub-clause (1) of this clause seeks to confer on the Lokpal the powers of a civil court in regard to matters such as summoning of witnesses, discovery and production of documents, receiving evidence on affidavits, etc. The public servants will be obliged, notwithstanding the provisions in other laws about secrecy, etc., to disclose any information or document required by the Lokpal for purposes of an inquiry except when such information or document relates to the proceedings of the Cabinet and Cabinet Committees. The information or document required by the Lokpal may be withheld also when its disclosure or production is likely to prejudice the security, defence or international relations of India, but, unlike the provisions in the 1971 Bill, the Lokpal will be entitled to be satisfied about the correctness of such a claim.

Clause 16.—This is a new provision and it seeks to confer powers of search and seizure on the Lokpal.

Clause 17.—This clause is based on sub-clauses (3), (4), (5), (6) and (7) of clause 12 of the 1971 Bill. This clause provides that on the conclusion of an inquiry in respect of a complaint, the Lokpal will communicate his findings and recommendations to the concerned competent authority which will have to intimate, to the Lokpal, within three months of the receipt of his report, the action taken, or proposed to be taken, on the basis of his report. If the Lokpal is not satisfied with the action taken, or proposed to be taken, he will be entitled to make a special report about it to the President and it will be laid before each House of Parliament. In addition, the Lokpal will present to the President an annual report of his work which will also be laid before Parliament.

Clause 18.—This clause provides that when a complaint of misconduct is made against the Prime Minister, a copy of such complaint and of the Lokpal's report in respect of such a complaint when received by the Prime Minister shall be placed before the Members of the Council of Ministers for the Union.

Clause 19.—This clause provides that, as in the case of Judges, the salary, allowances and pension to Lokpal and Special Lokpals shall be charged on the Consolidated Fund of India.

Clause 20.—This clause provides for secrecy of information obtained by the Lokpal and his officers and employees, and is self-explanatory. This corresponds to clause 14 of the 1971 Bill.

Clause 21.—This clause provides for punishment for intentional insult or interruption to, or bringing into disrepute, the Lokpal and corresponds, in substance, to clause 15 of the 1971 Bill.

Clause 22.—This clause empowers the Lokpal to try himself and punish witnesses for giving or fabricating false evidence and for offences under sections 175, 178, 179 and 180 of the Indian Penal Code. There was no such provision in the 1971 Bill.

Clause 23.—Sub-clause (1), which corresponds to sub-clause (1) of clause 17 of the 1971 Bill, provides for conferment of additional functions on Lokpal in relation to eradication of corruption. Sub-clause (2), which corresponds to sub-clause (3) of clause 17 of the 1971 Bill seeks to enable the President to refer to the Lokpal any allegations of misconduct in respect of a public man.

Clause 24.—This clause provides for the disposal of deposits made by complainants under clause 13.

Clause 25.—This clause is self-explanatory and follows clause 16 of the 1971 Bill.

Clause 26.—This clause corresponds to clause 19 of the 1971 Bill and it provides for delegation of powers by the Lokpal to his staff.

Clause 27.—This clause provides for the power to make rules.

Clause 28.—This clause makes it clear that complaints cannot be made to the Lokpal in respect of matters referred to any Commission of Inquiry under the Commissions of Inquiry Act, 1952, before the commencement of the proposed legislation.

FINANCIAL MEMORANDUM

Clause 4(1) and clause 8(1) of the Bill provide respectively for the appointment of the Lokpal and Special Lokpal or Special Lokpals. Clause 6(3) provides for the salary payable to Lokpal. Clause 6(4) lays down that the Lokpal shall be entitled without payment of rent to the use of an official residence. Clause 6(5) of the Bill envisages that the allowances and pension payable to, and other conditions of service of, the Lokpal shall be such as may be prescribed by rules having regard to the allowances and pension payable to, and other conditions of service of, the Chief Justice of India. By virtue of clause 8(3), the provisions of clause 6(3), (4) and (5) apply in relation to the Special Lokpals also.

2 Sub-clause (1) of clause 9 provides that the Lokpal shall have a Secretary and such other officers and employees as may be prescribed by rules to assist him in the discharge of his functions. Sub-clause (2) of clause 9 empowers the Lokpal to secure, for the purposes of dealing with any complaints or any classes of complaints, the services of any officer or employee or investigating agency of the Central Government or a State Government or the services of any other person or agency. Sub-clause (3) of clause 9 provides that the terms and conditions of service of the officers and employees of the Lokpal and of the officers, employees, agencies and persons referred to in sub-clause (2) of that clause, shall be such as may be prescribed by rules in consultation with the Lokpal.

3 It is not possible to visualise at this stage whether any need will arise for the appointment of one or more Special Lokpals. Further, the salaries and other conditions of service of the staff of the Lokpal are to be prescribed by rules after consultation with the Lokpal. It is, therefore, not possible to give precise details of the expenditure involved. It is, however, estimated that the Bill, when enacted, will involve a non-recurring expenditure of Rs. 2 lakhs and a recurring expenditure of Rs. 20 lakhs a year. In case it becomes necessary to construct a building to house the establishment of the Lokpal, additional expenditure, of a non-recurring nature, of the order of Rs. 25 lakhs will also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 27 of the Bill empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the proposed enactment. The various matters in relation to which such rules may be made have been enumerated in detail under various items of sub-clause (2) of that clause and relate mainly to prescribing of competent authorities in respect of public men other than the Prime Minister and other members of the Council of Ministers for the Union and Chief Ministers of States, the conditions of service of the staff and officers who shall constitute the Secretariat for the Lokpal (in consultation with the Lokpal), the form in which complaints may be made and the fees, if any, which may be charged in respect thereof, the form in which certificates shall be furnished in respect of deposits under clause 12, the manner in which and the authorities or agencies with whom such deposits shall be made and the additional matters in respect of which powers of a Civil Court may be exercised by the Lokpal. These are matters of detail, necessary for the effective administration of the provisions of the Bill and it is difficult to provide for all the situations in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

AVTAR SINGH RIKHY,
Secretary.